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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Federal Communications Commission  
Office of the Secretary

ORIGINAL

In re the Application of )

BEACON BROADCASTING CORPORATION )

File No. BPED-900905ML

For a Construction Permit for a )  
New Noncommercial Educational FM )  
Station on Channel 207A at )  
Allentown, Pennsylvania )

To: The Chief, Mass Media Bureau

11 PETITION TO DENY

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FM EXAMINER

The Lehigh Valley Community Broadcasters Association (LVCBA), through its attorneys and pursuant to §73.3584 of the rules, hereby files its Petition to Deny the above-referenced application, as amended, by Beacon Broadcasting Corporation (Beacon) for a new noncommercial educational FM station on Channel 207A at Allentown, Pennsylvania. In support thereof, the following is shown:

1. LVCBA is an applicant for a new noncommercial educational FM station on Channel 207A to serve Allentown, Pennsylvania (FCC File No. BPED-891019MF). LVCBA's proposal is mutually exclusive with that of Beacon. Accordingly, LVCBA has standing to file the instant Petition to Deny. For the reasons below, Beacon's application, as amended, is blatantly defective and must be dismissed. Further, inasmuch as Beacon has already been afforded an opportunity to correct its defective proposal, any resubmission at this time is expressly barred by the Com-

2. By letter dated May 10, 1991 (Reference: 8920-RPC), the Commission returned Beacon's application as unacceptable for filing due to prohibited contour overlap to Station WRDV(FM), Warminster, Pennsylvania, in violation of §73.509 of the rules. As the Commission informed Beacon in that letter,

. . . pursuant to the Commission's Public Notice entitled 'Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications'. . . the Commission indicated that it would provide one opportunity to restate applications nunc pro tunc where the original application was returned and where a relatively minor curative amendment was filed within 30 days of the date of the return of the application.

Beacon was directed to correct any and all defects in its application. On June 10, 1991, Beacon re-tendered its application. Beacon averred that the application, as amended, corrected the engineering defect that resulted in the return of the original application. However, Beacon's application, as amended, remains patently defective.

3. Attached hereto is an Engineering Statement prepared on behalf of LVCBA. As that Statement observes, Beacon's application is patently defective due to massive predicted interference to television Station WPVI, Channel 6, Philadelphia, Pennsylvania, contrary to §73.525 of the rules. In particular, the predicted interference area encompasses the entire community of license and a total of 207,251 persons, or more than 200,000 persons in excess of the number permitted under §73.525. In addition, Beacon's proposed transmitter site is plotted at a location at variance with the coordinates provided by Beacon at Exhibit VB-2(b) of the application.

Finally, Beacon's Exhibit VB-2(b), page 4, respecting Beacon's

"exceptional terrain" considerations of §73.525(e)((1)(vi) is inapposite. Acceptance of Beacon's proposal would mean that numerous NCE operations could propose to be located within TV Channel 6 Grade B contours with potentially disastrous consequences for those television operations.

5. Beacon's defective proposal was inadvertently accepted and must be dismissed. Moreover, the Commission's policies concerning the processing of AM and FM applications do not permit a second resubmission by Beacon of its application. The Commission's Public Notice respecting patently defective AM and FM applications (FCC 84-366, released August 2, 1991) in this regard clearly states that

Finally, we would also like to note that we have, on many occasions, granted reconsideration of an action dismissing or returning an application as unacceptable for filing when an applicant submits a relatively minor curative amendment within 30 days. In contested proceedings, the result of this procedure is that applications are accepted nunc pro tunc. We will continue to act favorably on such requests after an initial dismissal or return of an application as unacceptable for filing. This procedure is a reasonable accommodation to applicants who wish to participate in the comparative proceeding and may be unfamiliar with our application requirements. In the situations in which we have granted reconsideration in the first instance, the curative amendment has not unduly delayed the processing of other applications. In the future, we will, however, expect such applicants to completely review all portions of a returned or dismissed application. Thereafter, if the same application is returned or dismissed a second time, it will not be afforded nunc pro tunc reconsideration rights. Repeating a procedure whereby applications are re-accepted nunc pro tunc is obviously unfair to other applicants in a comparative proceeding who have prepared properly executed

applications. Furthermore, this process of repeatedly affording nunc pro tunc reconsideration rights leads to delay and tends to encourage the filing of incomplete and poorly prepared applications.

Under these circumstances, any attempt by Beacon to cure its blatantly defective application must be rejected by the Commission.

WHEREFORE, for the foregoing reasons, LVCBA respectfully urges that the Commission should dismiss or deny Beacon's application.

Respectfully submitted,

LEHIGH VALLEY COMMUNITY  
BROADCASTERS ASSOCIATION

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ENGINEERING STATEMENT  
ON BEHALF OF  
LEHIGH VALLEY COMMUNITY BROADCASTERS ASSOCIATION  
APPLICANT FOR A NEW EDUCATIONAL FM STATION AT  
ALLENTOWN, PENNSYLVANIA

IN SUPPORT OF A PETITION TO DENY  
THE APPLICATION FOR CONSTRUCTION PERMIT  
OF BEACON BROADCASTING CORPORATION (FILE #BPED-900905ML)  
AT ALLENTOWN PENNSYLVANIA

CHARLES W. LOUGHERY  
741 CYBUS WAY  
SOUTHAMPTON, PA 18966

This Engineering Statement was prepared on behalf of Lehigh Valley Community Broadcasters Association, an applicant for construction permit for a new Educational FM station at Allentown, Pa, in support of a petition to deny the application of Beacon Broadcasting Corporation for a construction permit for a new Educational FM station at Allentown, Pa. Beacon Proposes operation on Channel 207 with an Effective Radiated Power of .135 Kilowatts at a Height above average terrain of 245 meters. The instant statement shows that the facility proposed will result in interference to the reception of channel 6 television station WPVI Philadelphia to a number of persons far in excess of that permitted under 73.525 of the Commissions rules.

In the Engineering portion of the Beacon application, Beacon determined that interference to WPVI would involve 171 persons. This result was reached only after a terrain study purporting to show that virtually all of the interference area is shadowed.

However, the Channel 6 protection rules (73.525) do not permit an adjustment in this case. To the extent that Beacon is may be relying on language contained in 73.525(e)(vi) which deals with widely varying terrain such as an "intervening mountain", that provision is inapplicable to the case at hand and may not be used by Beacon.

Beacon's proposed transmitter site is located within the WPVI Grade B contour.

Beacon at Exhibit VB-7B of its application depicts the interference area as being completely inside the WPVI Grade B contour. The supplemental showings envisioned under 73.525(e)(vi)

impeding the development of the mediated interference areas from progress

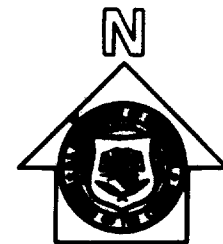
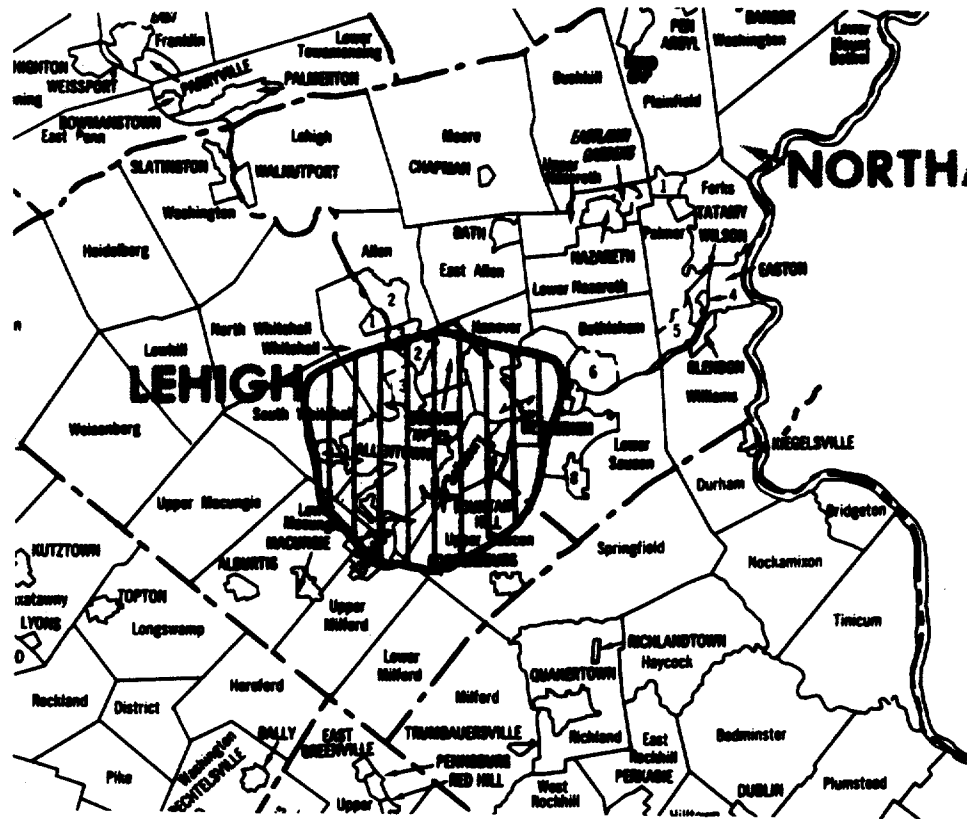


information) shows values under the dBk and kW columns which exceed the .135kW (Max)Da proposed.

EXHIBIT A

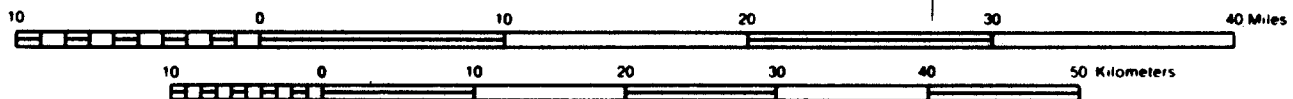
CH 6 INTERFERENCE AREA

PLOTTED ON A PORTION OF THE PENNSYLVANIA CENSUS MAP



SCALE 1: 500,000

1 INCH REPRESENTS APPROXIMATELY 8 MILES



DECLARATION

I, Charles W. Loughery, do declare under penalty of perjury  
that I have prepared the attached Engineering statement on behalf  
of Lehigh Valley Community Broadcasting Association in support of

**CERTIFICATE OF SERVICE**

I, Nancy M. Cassady, Secretary in the firm of Schwartz, Woods & Miller, certify that I have on this 19th day of November, 1991, sent by First Class United States mail, postage prepaid, copies of the foregoing PETITION TO DENY to the following:

Jeffrey D. Southmayd, Esquire  
Southmayd Simpson & Miller  
1233-20th Street, NW  
Second Floor  
Washington, DC 20036

  
Nancy M. Cassady